

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division**

In re:

CIRCUIT CITY STORES, INC.,

Debtors,

**BAGBY & RUSSELL ELECTRIC
COMPANY, INC.**

Movant,

v.

CIRCUIT CITY STORES, INC.

Respondent.

**Case No. 08-35653-KRH
Chapter 11**

Contested Matter No. _____

NOTICE OF AND MOTION FOR RELIEF FROM AUTOMATIC STAY

Bagby & Russell Electric Company, Inc. ("B&R") has filed papers with the Court seeking relief from the automatic stay (the "Motion").

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the Court to grant the relief sought in this Motion, or if you want the Court to consider your views on the Motion, then on or before March 27, 2009, you must file a written response explaining your position with the Court at the following address:

Augustus C. Epps, Jr., Esquire (VSB 13254)
Michael D. Mueller, Esquire (VSB 38216)
Jennifer M. McLemore, Esquire (VSB 47164)
Noelle M. James, Esquire (VSB 76001)
CHRISTIAN & BARTON, L.L.P.
909 East Main Street, Suite 1200
Richmond, Virginia 23219
Telephone: (804) 697-4100
Facsimile: (804) 697-4112

Counsel to Bagby & Russell Electric Company, Inc.

William C. Redden, Clerk
U.S. Bankruptcy Court
Eastern District of Virginia
Richmond Division
701 East Broad Street, Suite 4000
Richmond, Virginia 23219

If you mail your request or response to the Court for filing, you should mail it early enough so that the Court will receive it on or before the date stated above.

You must also mail a copy to:

Michael D. Mueller, Esquire
Christian & Barton, LLP
909 East Main Street, Suite 1200
Richmond, Virginia 23219

You must attend a Preliminary Hearing scheduled to be held on **March 30, 2009 at 10:00 a.m.** in Courtroom 5000, United States Bankruptcy Court, U.S. Courthouse 701 East Broad Street, Richmond, Virginia.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the Motion and may enter an Order granting that relief.

MOTION FOR RELIEF FROM AUTOMATIC STAY

B&R respectfully states the following in support of its Motion for Relief from Automatic Stay requesting the Court to permit B&R to pursue certain mechanic's lien litigation in Alabama state court:

1. Jurisdiction is conferred upon this Court pursuant to 28 U.S.C. § 1334. This matter is a "core" proceeding as set forth under 28 U.S. C. § 157.
2. On November 10, 2008 (the "Petition Date"), Circuit City Stores, Inc., et al. (the "Debtors") filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code").
3. On or about December 18, 2008, B&R, an Alabama corporation whose principal place of business is in Alabama, filed its Verified Statement of Lien in the amount of

\$103,771.00, plus interest and attorney's fees, in the Clerk's Office for Baldwin County, Alabama (the "Mechanic's Lien"). A true and correct copy of the Verified Statement of Lien is attached hereto as **Exhibit A**. Thereafter, on or about February 5, 2009, B&R filed an Amended Verified Statement of Lien in the Clerk's Office for Baldwin County, Alabama, a true and correct copy of which is attached hereto as **Exhibit B**.

4. The Mechanic's Lien was filed as a result of nonpayment of moneys owed by The Stewart/Perry Company, Inc. to B&R as subcontractor in the construction of Circuit City Store No. 4227, 31000 Bass Pro Drive, Spanish Fort, Alabama 36572 (the "Property").

5. B&R's Mechanic's Lien attaches to both the real property and the Debtors' former leasehold interest. Pursuant to an Order entered by this Court on January 21, 2009 [Docket No. 1705] the Debtors rejected the subject lease agreement related to the Property and have quitclaimed any interest in the Property to the Lessors. This Motion seeks no relief against the Debtor or property of the Debtors.

6. In order to enforce its Mechanic's Lien against the Property, B&R must file suit to enforce its Mechanic's Lien on or before April 10, 2009 (the "Litigation").

7. Pursuant to Alabama state law, Circuit City is a necessary party to the Litigation.

8. Through such Litigation, B&R would simply seek the sale of the Property, which is not an asset of the Debtors' bankruptcy estate.

9. Upon the filing of this Bankruptcy, B&R was stayed from pursuing such Litigation.

10. The interests of B&R in the Property are not adequately protected thereby constituting cause to grant relief from the automatic stay pursuant to Section 362(d)(1) of the Bankruptcy Code so that B&R may enforce its mechanic's lien through the Litigation.

11. As stated above, the Debtors have rejected the subject Lease Agreement and have quitclaimed their interest in the Property to the Lessors.

12. B&R requests that the ten-day period or stay under Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure, during which the stay remains in effect, be waived and any Order granting relief become effective immediately upon entry.

WHEREFORE, by reason of the foregoing and arguments at any hearing, Bagby & Russell Electric Company, Inc. respectfully requests that this Court enter an Order:

- a. Granting it immediate relief from the automatic stay of 11 U.S.C. § 362(a), to allow B&R to pursue Litigation to enforce its Mechanic's Lien, including the sale of the Property, solely as set forth herein;
- b. Modifying the automatic stay of 11 U.S.C. § 362(a) as requested herein;
- c. Waiving the ten-day period or stay under Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure, during which the stay remains in effect; and
- d. Otherwise granting B&R adequate protection and such other and further relief as the Court may deem appropriate.

Dated: March 12, 2009

Respectfully submitted,
BAGBY & RUSSELL ELECTRIC
COMPANY, INC.

/s/ Michael D. Mueller
Augustus C. Epps, Jr., Esquire (VSB 13254)
Michael D. Mueller, Esquire (VSB 38216)
Jennifer M. McLemore, Esquire (VSB 47164)
Noelle M. James, Esquire (VSB 76001)
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Facsimile: (804) 697-4112
Counsel to Bagby & Russell Electric Company, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of March, 2009, I caused a copy of the foregoing to be served by electronic means on the “2002” and “Core” lists and through the ECF system.

/s/ Michael D. Mueller

Michael D. Mueller

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